

## **CHANGES IN YOUR RESPONSIBILITIES AS GUARDIAN AND/OR CONSERVATOR**

On January 1, 2012, new laws governing the duties of persons appointed guardian and/or conservator by a Nebraska Court went into effect. These changes provide better protection of the ward/protected person/incapacitated person and eliminate the differences in procedures which sometimes occurred from county to county. Some of these changes will affect you as a guardian and/or conservator appointed prior to these changes. This information is provided to help you understand the changes in the law and your responsibilities.

### **Under the new laws:**

Funds from the protected person's accounts should not be co-mingled with other funds. You must keep all funds belonging to the protected person in an account separate from anyone else's funds.

You should not make cash withdrawals from an ATM or cash back on debit transactions out of the protected person's account without a court order.

You must file a copy of your Letters and a Certificate of Proceeding Involving Real Estate with the Register of Deeds in any county where the ward has real property or an interest in real property.

The Court will now give you 45 days notice of the due date for your annual accounting and reports. That notice is included with this information, along with the forms that you must now use for your reports.

**You are required to use the following court forms for your annual accounting/reports. Forms can be found at the Supreme Court's Website: <http://www.supremecourt.ne.gov/forms/county/guardian-conservators.shtml>. Use of any other reports or deviations from the form of the required documents will be rejected and you will be sent a corrective action notice and be required to file again at your expense your accounting/reports as required below:**

**UPDATED INVENTORY/Annual Accounting** has replaced the old Annual Accounting/Statement of Assets form. To protect the personal information of the protected person, only the last four digits of the accounts should be listed on this form, which is public record. There is a \$5 fee when filing this report.

**BANK STATEMENTS and brokerage reports** for the year included in the accounting must be filed with the Annual Accounting and Certificate of Proof of Possession. These bank statements and brokerage reports and the certificate of proof of possession must be sent to all interested parties and should not include full account numbers, social security numbers, dates of birth or any other personal information. If full account numbers, social security numbers, dates of birth or other personal information appear on the bank statements, brokerage reports and/or the Certificate of Proof of Possession you must black them out before you send them to the interested parties. The bank statements that are filed with the court will be kept confidential to protect any personal and financial information they contain.

**CERTIFICATE OF PROOF OF POSSESSION** has been changed to make it easier to read and understand. It must be signed by the bank or company holding funds or securities which are part of the protected person's estate. You must have one certificate of proof of possession for each bank or company in which the protected person's funds are held. If the funds in the bank are restricted, the bank must check the box indicating "restricted". Otherwise you may be required to post a bond to ensure the security of the funds in that account. To protect the personal information of the protected person, only the last four digits of the accounts should be listed on this form, which is public record.

**PERSONAL AND FINANCIAL INFORMATION FORM** must be filed with Annual Accountings, Certificate of Proof of Possession forms, and other forms which require birthdates, social security numbers, account numbers and other personal information. The form is used to record the confidential information which you should not include on the

documents that become part of the Court file. This form is kept in a confidential court file to protect the personal and financial information it contains.

**ANNUAL REPORT OF GUARDIAN ON CONDITION OF WARD** is required of guardians only. It contains information on the ward, residence, condition, as well as a request for new information as to whether or not you as guardian have control of the ward's assets. If someone else acts as payee for the guardian's funds, you must provide information on those funds, if the payee does not report to the Court. There is a \$5 fee when filing this report.

**NOTICE OF RIGHT TO OBJECT** is a new form which tells interested persons that they have a right to raise questions or objections to your reports/accounting. Interested parties have always had this right, but a new **OBJECTION** form located on the Supreme Court Website makes it easier for concerns to be brought to the attention of the court and helps protect the interests of the ward/incapacitated person. You must send this form to each interested party who remains active in the case.

**NOTICE OF INTERESTED PARTY** is a new form. You are required to mail a copy of the Notice of Interested Party form to each person who receives your annual reports. The recipient must decide whether to keep receiving reports, etc. next year. Anyone who does not return the Notice to the Court can be removed from your mailing list for next year. *You will need to send this form to interested parties only with the 2012 accounting, and you will not need to send this form in future years. This will allow the Court to either retain or eliminate the names of individuals as interested parties.*

**AFFIDAVIT OF MAILING** shows the Court that you have mailed the reports, forms and notices to all interested persons and the bonding company, if any. **\*\*PLEASE REVIEW THIS FORM TO DETERMINE WHO THE INTERESTED PERSONS ARE WHO MUST RECEIVE YOUR FILINGS. --- If there are no interested persons identified for a ward or a protected person, Nebraska Supreme Court rule requires the court shall appoint a guardian ad litem. The cost of the guardian ad litem may be taken from the assets of the ward or protected person.**

**APPLICATION FOR APPROVAL OF ACCOUNTING** is filed if you are requesting fees and/or approval of the accounting. The court will provide you a hearing date and you will need to file a separate **AFFIDAVIT OF MAILING** to show that you have mailed the accounting and notice of hearing to all interested parties and the bonding company, if any.

Your accountings/reports will be reviewed for accuracy and completeness. If you make a mistake in the accounting or leave something out, you will receive a Notice of Need for Corrective Action(s), and will usually be given a chance to provide additional or corrected information before a hearing date is set.

The court can set a hearing on your accounting/report upon your application, on the Court's own motion, or upon receipt of an objection from an interested person. Notice of the hearing date, time and location shall be sent to the guardian/conservator, attorney(s) (if any), and all interested parties by the Court or person requesting the hearing.

Additional information is available on the Supreme Court's Guardianship/Conservatorship Website including a recorded video on the changes and how they affect existing guardianships. <http://www.supremecourt.ne.gov/Guardian/guardian-info.shtml>.

If you have questions after reading the information provided on this page and on the Website, and watching the video, you should contact your attorney for advice on how to comply with these changes.

The above changes are due to legislative and Supreme Court Rule changes. **LB157 made changes to Nebraska law and can be found on the State Legislature's website:**

<http://www.nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB157.pdf>. **The current Supreme Court Rule can be found on the Supreme Court's Website:** <http://www.supremecourt.ne.gov/rules/pdf/Ch6Art14.pdf>.